

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Oak Hill Chapel Ministries)	
	District 2, Map 44, Control Map 44, Parcel 7.15,)	
	Special Interest 000)	
	<i>Claim of Exemption</i>)	Cocke County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) from the denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization ("State Board") on December 21, 2005. By letter dated November 9, 2006, State Board staff attorney Emily Bennett denied the application on the ground that the named applicant – Oak Hill Chapel Ministries ("OHCM") – was "not a qualifying institution within the meaning of Tennessee Code Annotated section 67-5-212(a)(1)(A)." OHCM filed this appeal with the State Board on January 17, 2007. The undersigned administrative judge conducted a hearing of this matter on May 24, 2007 in Newport. OHCM was represented by James C. McSween, Jr., Esq., of McSween & McSween (Newport). Cocke County Assessor of Property Margaret Sorrell appeared on her own behalf.

Findings of Fact and Conclusions of Law

This case spotlights a relatively obscure type of entity called a *corporation sole*: i.e., "one consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had." *Black's Law Dictionary* (6th ed., 1990), p. 341.

The 37.78-acre parcel in question, which consists of cropland, pasture, and woodland, is located near the Greene County line in Parrottsville. This parcel encompasses 11 tracts that were formerly owned by Mary Lou Stollenmaier and members of her family (two daughters and sons-in-law) – either individually or as trustees for the Oak Hill Chapel Association. On October 14, 2005, those persons quitclaimed their respective interests in the property to "the office of presiding elder, held by Mary Lou Stollenmaier, and her successors, a corporation sole of and for the Oak Hill Chapel Ministries, of 1375 Horizon Way, Parrottsville, Tennessee 37843."¹ Exhibit 1.

¹The quitclaim deed also transferred a one-acre cemetery whose tax-exempt status is not in dispute.

The named grantee was chartered as a nonprofit corporation by the state of Nevada on November 10, 2005 for the following objective:

To act as an emmissary [sic] in the office appointed for the Holy Kingdom and Priestly Order, after the order of Melchizedek, an ecclesiastical church ministry society of the corpus Christi.

Articles of Incorporation, paragraph 4.

In December, 2005, Ms. Stollenmaier submitted an application for exemption of the subject property in the name of OHCM – described in the accompanying Mission Statement as “a church ministry within the Sovereign Holy Nation and Kingdom of the Most High and Priestly Order after the Order of Melchizedek.”

According to Ms. Stollenmaier’s testimony, she and her family moved from New Jersey to Tennessee over 20 years ago for the very purpose of establishing such a ministry. She considered its “primary focus” to be providing shelter in the event of disaster or emergency; helping the needy; and rendering spiritual guidance. In her view, part of this ministry involved the operation on the subject property of a “garden center” that was founded in the mid-1990s by Robert Stollenmaier (now deceased).² Ms. Stollenmaier stated that the organic fruits and vegetables grown on this farm were intended solely for OHCM’s own use – not for sale. Indeed, she declared that OHCM really had no income (other than “donations” from its adherents).

But a colorful brochure on the “Oak Hill Gardens” recounts that, while it initially “served families local to the Parrottsville center,” the farm began to expand in 2004. Trumpeting “the very best in home grown taste,” this pamphlet concludes: “For more information about these organic practices **and produce available direct**, give us a call.” [Emphasis added.]

Further, on a recent application for a “greenbelt” classification of the subject property (dated May 23, 2007), Ms. Stollenmaier certified that it “will produce gross agricultural income of at least \$1,500 per year on average over any three years it is classified as ‘Greenbelt.’”³ That application has been approved.

Situated on the subject land is a *chapel* that was built around 1989. Once or twice a week since then, Ms. Stollenmaier asserted, OHCM has conducted worship services and/or prayer meetings in this facility. The appellant also seeks exemption of an adjoining *playground*; a *campground* where revivals are held in the spring and fall; and several *mobile homes* which Ms. Stollenmaier described on the application as “parsonages”: (1) her residence; (2) a guest

²In an attachment to the appeal form, Ms. Stollenmaier averred that “[o]ur religious beliefs compel us to live a simple lifestyle in an agrarian environment which necessitates maintaining a garden (called the garden center), to ensure proper physical, mental and spiritual health and growth.”

³The greenbelt law grants preferential tax treatment to owners of qualifying land by basing the assessment thereof on its “present use value” rather than market value. See Tenn. Code Ann. sections 67-5-1001 *et seq.*

house for visiting pastors and speakers; and (3) a “clinic” for the accommodation of persons who, because of disability or illness, cannot attend the regular worship services in the chapel.⁴ Exhibit 2.

Article II, section 28 of the Tennessee Constitution states (in relevant part) that “all property real, personal or mixed shall be subject to taxation, but the Legislature may except...such as may be held and used for purposes purely religious, charitable, scientific, literary, or educational.” Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers **purely and exclusively** for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists...[Emphasis added.]

Tenn. Code Ann. section 67-5-212(a)(1)(A).

However, “no church shall be granted an exemption on more than one (1) parsonage that includes not more than three (3) acres of land....” *Ibid.* The law further provides that:

The real property of any such institution not so used exclusively for carrying out thereupon one (1) or more of such purposes, but leased or otherwise used for other purposes, **whether the income therefrom be used for one (1) or more of such purposes or not**, shall not be exempt...[Emphasis added.]

Tenn. Code Ann. section 67-5-212(a)(3).

No property may be exempted from taxation under Tenn. Code Ann. section 67-5-212 unless an application for such exemption has been filed with and approved in writing by the State Board. The State Board has promulgated rules which prescribe criteria for exemption of land owned by religious or other qualifying institutions. State Board Rule 0600-8-.02 establishes a rebuttable presumption that such land is in actual use for exempt purposes if it underlies “exempt structures or paving,” or if “the total land area claimed for exemption, including that which is underlying exempt structures, is **five acres or less.**” [Emphasis added.]

As the party seeking to change the initial determination on its application for exemption, the property owner has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

Mr. McSween acknowledged in a post-hearing written statement that a corporation sole “has not been recognized by statute in Tennessee.” Nevertheless, the attorney asserted, “it

⁴The appellant does not claim exemption of two other homes on the subject parcel (identified as Special Interests 002 and 003) which apparently belong to Nicholas and Geraldine Fanelli. Ms. Fanelli, one of Ms. Stollenmaier’s daughters, was also a trustee of the Oak Hill Chapel Association.

The Assessor has allocated a total of 3.50 acres to the improvements on the subject parcel.

has, as a matter of practice, for many years been recognized as a valid entity for the purpose of holding real estate.” In support of this position, he referred to an article by James B. O’Hara entitled *The Modern Corporation Sole*, 93 Dickenson Law Review (Fall 1988).

Counsel has not explained precisely how, when, or by whom this purported recognition of a corporation sole occurred in Tennessee. Moreover, according to the author of the cited article:

Although differences exist, the corporations sole created under general corporation laws and those established by special acts or private charters have several common features....**[B]oth are more than merely modes of holding title to property. Both are meant to provide a framework for the operation of a continuing concern. They are also both meant to provide a structure for the planning, financing, direction and management necessary for an organization existing and working in a sophisticated business environment.** [Emphasis added.]

Id. at p. 8.

The foreign (Nevada) corporation which owns the property in question would seemingly be required by the Tennessee Nonprofit Corporation Act to obtain a certificate of authority from the Secretary of State in order to perform the range of functions highlighted above. See Tenn. Code Ann. sections 48-65-101 *et seq.* There is no indication that the appellant has met this requirement.

In the opinion of the administrative judge, the appellant’s claim of exemption is also undermined by the current greenbelt status of the subject property. As defined in the applicable law, “agricultural land” means that which “constitutes a farm unit engaged in the production or growing of agricultural products.” Tenn. Code Ann. section 67-5-1004(1)(A)(i). However liberally the property tax exemption statute may be construed, the administrative judge is not inclined to agree that land which meets this description is used “purely and exclusively” for religious purposes. There is no reason to suppose that the legislature intended to confer outright exemption on an income-generating “farm unit” just because it is owned by a church or other avowedly religious institution. Indeed, such a result would not likely withstand constitutional scrutiny.

Finally, the evidence of record leaves substantial doubt as to whether OHCM truly possesses an institutional identity separate from that of the matriarch (and members of her family) who transferred the subject property to the corporation sole. As the presiding elder, of course, Ms. Stollenmaier embodies and completely controls this corporation. In City of Knoxville v. Fort Sanders Hospital, 257 S.W. 408 (Tenn. 1924), the Supreme Court of Tennessee refused to exempt a then for-profit hospital which had been acquired by several local doctors. “The same argument which would make of this property a scientific institution,”

the Court observed, “would make of every pious family a religious institution and exempt its home from taxation.” 257 S.W. at 409.

To be sure, “[t]here is no clear line of separation between a religious institution within the meaning of Tenn. Code Ann. section 67-5-212 and a small group of friends and family who may meet regularly to share their faith.” Concord Bible Methodist Church (Knox County, Initial Decision and Order, April 13, 2005), p. 5. But the proof strongly suggests that the subject property would more accurately be characterized as a family compound than the site of a full-fledged religious institution.⁵ Especially revelatory in this regard is OHCM’s attached income and expense statement for 2005. The exact equivalence between the so-called “donations” to the organization and its supposed operating expenses (including debt service and property taxes) indicates that this statement really amounts to a glorified household budget.

Respectfully, for these reasons, the administrative judge is not persuaded that any part of the subject property should be tax-exempt.

Order

It is, therefore, ORDERED that the initial determination of the State Board’s staff attorney be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

⁵Interestingly, on the Assessor’s Checklist, Deputy Assessor Angie Shelton expressed the opinion that “[t]his is a private community.”

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 25th day of June, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: James C. McSween, Jr., Attorney, McSween & McSween
Margaret Sorrell, Cocke County Assessor of Property

OHCM2.DOC

APR-07-2006 FRI 08:30 AM COMCARE INC.

FAX NO. 4236381105

P. 03

Oak Hills Chapel

Income & Expenses
2005

Donations

\$ 12524.77

\$ 12524.77

Expenses

Newport Federal mtg.	\$ 6628.28
NAB Electric	1252.93
Leo's Pest Control	300.00
JCCHO Gas	360.00
Insurance	423.00
Bill South Phone	235.56
Church Supplies	600.00
Road/Grounds Maintenance	1200.00
Revivals (2x yr.)	600.00
Tapes (property)	925.00
	<u>\$ 12524.77</u>

Mary Lou Stollenmaier
Residing Elder
4-7-06